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No. 835

Supreme Court of the United States

OCTOBER TERM, 1965

REPUBLIC OF IRAQ,

Petitioner,

against

FIRST NATIONAL CITY BANK, as Administrator of the Goods, Chattels, and Credits of His Majesty King Faisal II Ibn Ghazi Ibn Faisal I of Iraq, Deceased.

Respondent.

BRIEF OF RESPONDENT, FIRST NATIONAL CITY BANK, AS ADMINISTRATOR, IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI FILED BY REPUBLIC OF IRAQ

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IN THE

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Question Presented

Whether the United States Court of Appeals for the Second Circuit properly exercised its discretion when it refused to recognize and give extra-territorial enforcement to an expropriation decree of a foreign government, issued without compensation, as to property located in the United States of America?

Statement of the Case

Several days after the death of King Faisal II of Iraq, the revolutionary Government of Iraq issued Ordinance 23 which purported to expropriate all of the late King's property. Respondent opposes petitioner's contention that Ordinance 23 is enforceable against the decedent's property in the State of New York. The courts below have dismissed petitioner's claim (353 F. 2d 47).

Under date of April 23, 1964 an intermediate decree was made in the Surrogate's Court, New York County, under which the estate of King Faisal II was directed to be distributed to his widow and his great granduncle (Exhibit D, R. p. 144). Under date of December 14, 1964, a final decree was made in the Surrogate's Court, New York County, directing the respondent to distribute the net estate to the widow and the late King's granduncle (Exhibit E, R. p. 145). No appeal was taken from those decrees.

I

There is no proper basis for granting the review requested.

The petitioner has failed to show any special or important reason for granting the writ of certiorari.

The petitioner has not shown adequate ground for the issuance of a writ under Rule 19 of this Court nor has it shown that the decision of the United States Court of Appeals for the Second Circuit is in conflict with the decision of another Court of Appeals or with any decision of this Court.

II

The cases relied upon by Petitioner are not applicable.

Petitioner relies principally upon *United States* v. *Belmont,* 301 U.S. 324, and *United States* v. *Pink,* 315 U.S. 203. Those cases involved claims by the United States under the *Litvinov* assignment and consequently they have no application whatsoever in the situation before this Court. They are adequately distinguished in the Opinion of Judge Friendly in the Court of Appeals (Appendix A to the petition, p. 7).

Petitioner also mistakenly relies upon *Banco Nacional de Cuba* v. *Sabbatino,* 376 U.S. 398. The distinguishing feature of the *Sabbatino* case which petitioner has chosen to ignore is the fact that the Cuban government's expropriation occurred in its own territorial waters, not in the United States. As pointed out by Mr. Justice Harlan, this Court only decided the question concerning the validity of the Cuban expropriation "within its own territory" (376 U.S. 398, at p. 428).

III

Act of State Doctrine is not applicable.

Respondent respectfully submits that the position of the Department of State nullifies any assertion made by petitioner under the Act of State Doctrine.

By letter dated January 15, 1965 (Exhibit G, R. p. 148), the State Department stated that the administration of estates and the determination of rights and interests to property in the United States are ordinarily matters for determination by the courts and, accord-

ingly, the Department said that the legal effect of Ordinance 23 of the Government of Iraq as it may pertain to property in the United States was a question to be determined by the courts.

Conclusion

It is respectfully submitted that in the circumstances here presented the granting of certiorari to the petitioner is not warranted and consequently the petition should be denied.

Dated: January 14, 1966

Respectfully submitted,

HERBERT BROWNELL
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Attorneys for Respondent

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REPLY BRIEF OF PETITIONER.

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REPLY BRIEF OF PETITIONER.

The statement in the respondent's brief (p. 2) that "No appeal was taken from those decrees" infers that petitioner was a party thereto.

Petitioner was not a party to the proceedings in the Surrogate's Court, although respondent unsuccessfully tried to transfer this case to that Court, 207 F. Supp. 588 (1962).

The decree of the Surrogate's Court has no bearing upon this case. There was neither identity of issue nor parties. The Surrogate's Court did not have before it for consideration the effect of Ordinance No. 23 which is exclusively a Federal question.

The State Department letter relied on by the respondent is no more than a "hands-off" letter and was so treated in the Courts below. Cf. *Banco Nacional de Cuba* v. *Sabbatino*, 376 US 398, 420.

Conclusion.

It is respectfully submitted that the petition for writ of certiorari should be granted.

Respectfully submitted,

LEO C. FENNELLY,
EDWARD P. F. EAGAN,
Attorneys for Petitioner.

January 18, 1966.